

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-13-0033
RULES 47, 48, 51, 56-61, 63,	)	
AND 72, RULES OF THE	)	
SUPREME COURT	)	
	)	
	)	<b>FILED 09/02/2014</b>
	)	
	)	

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**ORDER**  
**AMENDING RULES 48, 56-61, 63, and 72,**  
**RULES OF THE ARIZONA SUPREME COURT**

A petition having been filed proposing to amend various rules relating to attorney discipline, and no comments having been received, upon consideration,

IT IS ORDERED that Rules 48, 56-61, 63, and 72, Rules of the Arizona Supreme Court, be amended in accordance with the attachment hereto, effective January 1, 2015.

DATED this 2<sup>nd</sup> day of September, 2014.

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SCOTT BALES  
Chief Justice

TO:

Rule 28 Distribution

Hon. William J O'Neil

## ATTACHMENT\*

### Rule 48 Rules of Construction

(a) [No change in text.]

(b) **Rules of Civil Procedure.** Only the following Arizona Rules of Civil Procedure are applicable to discipline and disability proceedings before the presiding disciplinary judge or the hearing panel, as specifically set forth in these rules: Rules 4, 4.1, 4.2, 5, 5(f), 5.1, 6(a), 6(e), 7.1(a), 7.1(b), 8(b), 8(d)-(f), 10(b)-(d), 11(a), 12(b), 12(c), 12(e), 12(f), 16(a), 16(g)(2)(A-E) and (J), 16(i), 26(a)-(f), 29-36, 38.1 (c), 38.1(d), 38.1(i), 38.1(j), 42(a), 43-45, 56, 60(c), 80(a), 80(d), 80(h), and 80(i). In addition, Rules 6(c) and 13 of the Arizona Rules of Civil Appellate Procedure shall apply as specified in Rule 59.

(c)-(m) [No change in text.]

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### Rule 56. Diversion

(a)-(b) [No change in text.]

(c) **Diversion agreement or order.** If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney and the state bar. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint ~~has been filed~~, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

(d)-(e) [No change in text.]

### Rule 57. Special Discipline Proceedings

(a) [No change in text.]

1. [No change in text.]

2. [No change in text.]

A.-C. [No change in text.]

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\* Additions to text are indicated by underscoring and deletions by ~~strikeouts~~.

D. *General Language.* Agreements must include the following language, as applicable:

(i)-(iv) [No change in text.]

(v) a statement that the agreement has been approved as to form and content by the chief bar counsel or chief bar counsel's designee;

(vi) a statement that the complainant has been informed of the agreement for discipline and that a copy of the complainant's objection, if any, has been provided to the presiding disciplinary judge.

E.-F. [No change in text.]

### 3. *Procedure.*

A. If the parties reach an agreement before the authorization to file a formal complaint and the agreed upon sanction does not include a reprimand, suspension, or disbarment, the parties may elect to request an order pursuant to Rule 55(c) by providing to the committee for its review an investigative report and bar counsel's recommendation for an admonition, probation, restitution, or an assessment of costs and expenses. Alternatively, the parties may submit an agreement for discipline by consent with all supporting exhibits to the committee for its review. The committee shall either reject the request or agreement and order the proceedings continued in accordance with these rules, or accept the request or agreement and issue the appropriate order. In the event the agreement is rejected, the same agreement shall not be presented, without written notification of that rejection, to the presiding disciplinary judge.

B. [No change in text.]

4. *Presiding disciplinary judge ~~report~~ decision.* Within thirty (30) days of the submission of an agreement or the conclusion of hearing, if one is held, and receipt of the transcript, if any, the presiding disciplinary judge shall file a ~~report~~ decision with the disciplinary clerk and serve a copy on the parties. The ~~report~~ decision shall accept, reject or recommend modification of the proposed agreement. The ~~report~~ decision shall incorporate all or portions of the agreement, as appropriate.

A.-C. [No change in text.]

5. *Disbarment by consent.* The following provisions shall apply to admissions that constitute disbarment by consent:

A. Any member against whom charges have been made or a formal complaint filed may voluntarily consent to disbarment by filing with the disciplinary clerk, ~~in duplicate original, a~~ an original, written, verified consent to disbarment in the form prescribed in these rules or as otherwise approved by the court. The consent to disbarment shall be effective only upon acceptance by the presiding disciplinary judge. The general form of consent to disbarment shall be as follows:

[No change in remaining text of rule.]

### **Rule 58. Formal Proceedings**

(a)-(j) [No change in text.]

(k) **Report. Decision.** Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written ~~report~~ decision containing findings of fact, conclusions of law and an order regarding discipline, together with a record of the proceedings. Sanctions imposed shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis. The ~~report~~ decision shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the ~~report~~ decision and indicate the basis of the dissent in the ~~report~~ decision. The disciplinary clerk shall serve a copy of the ~~report~~ decision on respondent and on bar counsel of record. The hearing panel shall notify the parties when the ~~report~~ decision will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

### **Rule 59. Review by the Court**

(a) **Notice of appeal.** Within ten (10) days after service of a ~~report~~ decision of the presiding disciplinary judge, except reports regarding consent agreements, or a hearing panel, respondent or the state bar may appeal by filing with the disciplinary clerk a notice of appeal and serving a copy on the opposing party. An opposing party may file a notice of cross-appeal within ten (10) days from service of the notice of appeal and serve a copy on the opposing party.

(b) [No change in text.]

(c) **Stay pending appeal.** A respondent may seek a stay of the decision of the hearing panel by filing a request with the hearing panel within ten (10) days of the date the ~~report~~ decision was filed. Within five (5) days of a respondent filing an application for stay pending appeal, the state bar may file a response with the hearing panel. The application for stay pending appeal shall be granted subject to appropriate conditions of supervision, except when an interim suspension has been ordered or when the hearing panel, in its discretion, determines no

conditions of supervision will protect the public while the appeal is pending. No stay of the sanction shall be granted if the only issue on appeal is the assessment of costs and expenses.

(d)-(k) [No change in text.]

## **Rule 60. Disciplinary Sanctions**

(a) [No change in text.]

1.-4. [No change in text.]

### *5. Probation*

A.-B. [No change in text.]

C. The state bar shall be responsible for monitoring and supervising the respondent during the probationary period. The state bar shall report material violations of the terms of probation to the presiding disciplinary judge, ~~which may hold~~ by filing a notice of noncompliance with the disciplinary clerk and serving respondent with a copy of the notice. The notice of noncompliance shall include a verification or separate affidavit upon personal knowledge stating sufficient facts to support the allegations of material violations of the terms of probation. Respondent shall have ten days after service of the notice to file a response. Upon filing the notice of noncompliance, the presiding disciplinary judge may i) issue an order declining to proceed with the notice; ii) issue an order setting the matter for status conference; or iii) issue an order setting a hearing within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, the state bar must prove a violation must be proven by a preponderance of the evidence. At the end of the probation term, bar counsel shall prepare and forward a notice to the presiding disciplinary judge regarding the respondent's completion or non-completion of the imposed terms.

6. [No change in text.]

(b)-(c) [No change in text.]

## **Rule 61. Interim Suspension ~~by the Court~~**

(a)-(b) [No change in text.]

(c) [No change in text.]

1. [No change in text.]

2. *All other grounds for interim suspension.* The state bar may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel ~~report~~ decision.

A. [No change in text.]

B. *Hearing.* After receiving the response or after the time for filing a response has passed, the presiding disciplinary judge ~~shall~~ may rule on the motion or order an evidentiary hearing. If an evidentiary hearing is ordered, it shall be held, within ten (10) days of the order. ~~conduct an evidentiary hearing, unless the parties have stipulated to the entry of an order of interim suspension.~~ The state bar shall have the burden of establishing probable cause that the basis of the requested relief exists and that interim suspension is appropriate. The presiding disciplinary judge is not bound by common law or rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice. Respondent shall have the right to present evidence, cross-examine witnesses, and be represented by counsel. Within five (5) days after the matter is deemed submitted or a hearing is held, the presiding disciplinary judge shall file a ~~report~~ decision and an order.

C.-D. [No change in text.]

(d) [No change in text.]

(e) **Review by the Court.** Either party may seek review of the presiding disciplinary judge's decision.

1. *Appeal.* Within five (5) days after service of a ~~report~~ decision and order of the presiding disciplinary judge, respondent or the state bar may appeal by filing an opening brief with the disciplinary clerk. An answering brief may be filed with the disciplinary clerk no later than five (5) days after service of the opening brief. Briefs shall conform to the requirements of ARCAP 6(c). Briefs shall not exceed ten (10) pages and shall not be bound. The content of the briefs shall conform to ARCAP 13. After the time for filing the appellate briefs has expired, the disciplinary clerk shall transmit the entire record, including any transcripts and the parties' briefs, to the clerk of the court.

2. *Stay pending appeal.* Within five (5) days after service of a ~~report~~ decision and order of the presiding disciplinary judge, a respondent may seek a stay of the decision by filing an application for stay with the disciplinary clerk, along with the opening brief on appeal. The state bar may file a response with the disciplinary clerk, along with the answering

brief on appeal, within five (5) days after service of the application for stay. The disciplinary clerk shall transmit the application for stay with the record as set forth in paragraph (e)(1) to the clerk of the court. The court shall promptly rule on the application for stay, which shall not be granted unless good cause is shown.

3.-4. [No change in text.]

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### **Rule 63. Transfer to Disability Inactive Status**

(a) [No change in text.]

#### **(b) Method of Transfer**

1. *Judicial determinations of incapacity.* If a lawyer has been judicially declared incompetent, incompetent to stand trial, or is voluntarily or involuntarily committed on the grounds of incompetency or other disability or incapacity in a court proceeding, the presiding disciplinary judge, upon motion of bar counsel and proper proof of the fact, shall enter an order of transfer immediately transferring the lawyer to disability inactive status for an indefinite period until further order. A copy of the order shall be personally served upon the clerk of the court, the lawyer, the lawyer's guardian and conservator, and the director of the institution to which the lawyer may have been committed.

2. *Interim order of incapacity.* When it appears to the state bar, the committee, the presiding disciplinary judge, or the hearing panel that a lawyer may be incapacitated to the extent that the lawyer may be causing harm to the public, the legal profession or the administration of justice by reason of a mental or physical condition or because of addiction to drugs or intoxicants, bar counsel may file a motion, setting forth facts to support a prima facie finding of incapacity and accompanied by verification or affidavit, ~~may be filed~~ with the disciplinary clerk, for an order temporarily transferring the lawyer to disability inactive status pending a hearing to determine incapacity as provided in this rule.

3. *Finding of incapacity to discharge duty.* If it is alleged by a lawyer or otherwise appears in the course of a discipline proceeding that the lawyer is incapacitated or impaired by reason of a mental or physical condition or because of addiction to drugs or intoxicants, and the lawyer lacks the capacity to adequately discharge the lawyer's duty to clients, the bar, the courts or the public, a petition may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the committee, the presiding disciplinary judge, or the lawyer alleged to be incapacitated.

4. [No change in text.]

#### **(c) Proceedings to determine incapacity or competence.**

1. *Petition.* A petition requesting transfer to disability inactive status may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the committee, the presiding disciplinary judge, or the lawyer alleged to be incapacitated. The petition shall be accompanied by affidavits, reports, or other documentation to support a prima facie finding of incapacity.

2.-4. [No change in text.]

5. *Report of presiding disciplinary judge.* Within thirty (30) days after the hearing or the filing of the post-hearing memoranda hearing transcript or stipulation, the presiding disciplinary judge shall prepare and file with the disciplinary clerk a decision and order ~~report~~ containing findings of fact and conclusions concerning transfer to disability inactive status based on a determination of incapacity to discharge duty or competency to assist in defense. The presiding disciplinary judge shall also serve a copy of the report and the order transferring the lawyer to disability inactive status on the parties. Thereafter, the lawyer shall be transferred to disability inactive status subject to a right to appeal. If a party does not appeal the order of transfer, the presiding disciplinary judge shall notify the court of same by memorandum, and the decision shall be final.

6. *Appeal.* Either party may appeal the presiding disciplinary judge's decision and order regarding transfer of a lawyer to disability inactive status as provided in Rule 59.

(d) [No change in text.]

1.-2. [No change in text.]

3. *Order to show cause.*

A. *Petition.* In the case of a lawyer who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, the state bar shall file with the disciplinary clerk a petition for order to show cause.

B. [No change in text.]

C. ~~Report~~ Decision and Order of presiding disciplinary judge. The presiding disciplinary judge shall, as soon as practicable, prepare and file with the disciplinary clerk a ~~report~~ decision containing findings of fact and an ~~order recommendation~~ concerning whether the stay should be lifted. The presiding disciplinary judge shall also serve a copy of the ~~report~~ decision and order on the parties. Any such order is subject to appellate review by the court. ~~Upon~~ If an order is entered finding that an existing stay is no

longer supported by good cause, or ~~upon a~~ if an order is entered finding that a lawyer is no longer incompetent, and if the time to appeal has expired, any stayed discipline proceedings shall resume, ~~subject to appellate review by the court.~~

D. [No change in text.]

(e)-(g) [No change in text.]

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## **Rule 72. Notice to Clients, Adverse Parties and Other Counsel**

(a)-(d) [No change in text.]

(e) **Affidavit filed with hearing panel and court.** Within ten (10) days after the effective date of the judgment of disbarment or suspension, transfer to disability inactive status, or resignation, respondent shall file with the ~~hearing panel~~ disciplinary clerk and with the court an affidavit showing:

[No further change in text of rule.]